IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.136 OF 2006

Dhanpal Bapu Chougule ...Appellant
Vs.
Indumati Bapu Chougule ...Respondent

Ms Leena Patil i/b Mr.P.M.Pradhan for the Appellant
None for the Respondent.

CORAM: A.S.OKA, J.
DATED: MARCH 29,2006.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the original defendant. The Respondent-Plaintiff is the mother of the Appellant. A suit for possession filed by the Respondent has been decreed by the Trial Court and the decree has been confirmed in an Appeal preferred by the Appellant in the District Court.

2. The learned Advocate for the Appellant submitted that in view of the law laid down by the Apex Court in a decision reported in 2005 (1) Mh.L.J. page 1170 (Janki Vashdeo Bhojwani & another vs. Indusind Bank Ltd. and others) the power of attorney holder of the Respondent-Plaintiff was not entitled to give evidence. The second submission is that the Appellate Court has held that the suit filed by the Respondent will be governed by Article 64 of the Limitation Act, 1963 and as the Appellant was in possession of the suit land right from the year 1975, the suit filed in the year 1998 was barred by limitation. The reliance is placed on

Judgment and Decree dated 25th September 1998 passed by the Trial court in R.C.S.No.225 of 1995 filed by the Appellant against the Respondent in support of the contention that the possession of the Appellant from the year 1975 has been upheld by the Trial court in the said suit.

3. I have considered the submissions. It must be noted here that in paragraph No.6 of the Judgment delivered in R.C.S.No.225 of 1995 the learned Trial Judge has held that the exclusive ownership in respect of the suit property of the Respondent was admitted by the present Appellant. Perusal of the said judgment shows that there is no finding to the effect that the Appellant entered into possession of the property in the year 1975. Even in the present suit, there is no material on record to show that that the Appellant was in possession from the year 1975.

4. It must be noted here that in the earlier suit filed by the Appellant he has categorically admitted the ownership of the Respondent. This is not a case where the plea of adverse possession is raised. The suit filed by the Respondent was on the basis of title. As the Appellant has admitted the title of the Respondent in earlier suit, there was no question of any dispute regarding title of the Respondent in absence of any plea on the part of the Appellant of the adverse possession.

5. The Respondent-mother has established her ownership in respect of the suit property. The suit filed by the Respondent-mother is rightly held to be within limitation as the Appellant has not established his case that he was in possession from the year 1975. Hence, no substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.